

A.F.R.

23

HIGH COURT OF CHHATTISGARH AT BILASPUR
(DIVISION BENCH)

CORAM: Hon'ble Shri V.K. Shrivastava, J, &
Hon'ble Shri S.K. Agnihotri, J.

CRIMINAL APPEAL NO.06/1992

Baldau Singh

Vs

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

Sd/-
V.K. Shrivastava
Judge

12/12/2005

Hon'ble Shri S.K. Agnihotri, J.

I agree

Sd/-
Satish K. Agnihotri
Judge

Post for 12/12/2005

Sd/-
V.K. Shrivastava
Judge

(Division Bench)

Appellant : **Baldua Singh,**
S/o. Laxmi Singh Chouhan,
age 18 years,
r/o. Lalkhadan,
Police Station: Torwa,
Tahsil & Dist. Bilaspur.

Vs.

Respondent : State of Chhattisgarh

Shri Akhil Mishra, Panel Lawyer for the State.

(Delivered on ²³ /12/2005)

Per Vijay Kumar Shrivastava, J.

This appeal has been directed against the judgment of conviction and order of sentence passed by the Sessions Judge, Bilaspur, on 26/09/1991 in S.T. No. 172/1991 whereby the appellant has been convicted for committing the offence of murder punishable under Section 302 of the I.P.C. and sentenced him to undergo imprisonment for life.

2) Admittedly, Chandrika Bai- a widow, whose husband died 3 -4 years ago is the mother of the appellant. Appellant, his mother - Chandrika Bai, appellant's younger brother and his younger sister were living under a joint roof at village Lalkhadan. Deceased Bhagela was maternal brother of Milapa Bai. Bhagela was living with Milapa Bai and was working in a Spinning Mill along with Mipala Bai. In the intervening night of 19-20/11/1990 deceased Bhagela was sleeping in appellant's house. Milapa Bai in the early morning came to appellant's house to wake up Bhagela. When she entered the room she saw Bhagela lying dead in injured condition on a cot, in a pool of blood. She cried out and hearing her cry Dev Charan Sahu came who also saw the dead body of Bhagela lying on a cot inside the appellant's house, having injury over his neck. Dev Charan went to the Police Station and lodged the first information report.

3) The prosecution story, in brief, is that widow Chandrika Bai had illicit relation with deceased as a result thereof she conceived and was carrying pregnancy for about 13 weeks, therefore, the appellant who was the son of Chandrika Bai in the intervening night of 19-20/11/1990, when Chandrika Bai was not in the village, went to the house of deceased called the deceased to come to his house to sleep in the night. Therefore, deceased along with appellant came to appellant's house and remained in his house in the night. Milapa Bai and deceased both were working in a Spinning Mill. Milapa bai had no issues, therefore, she kept the deceased and brought him up. In the morning she went to the appellant's house to wake up Bhagela so that they may go to their

job. She called the appellant and asked him to wake up Bhagela. Appellant told that Bhagela is sleeping in other room, therefore, she opened the door where she saw the dead body of Bhagela lying inside the room. The dead body full of blood was lying on a cot having injury on his neck and blood was flowing beneath the cot. On being informed by Milapa Bai, Dev Charan came to the spot, saw the scenario and thereafter went to the Police Station and lodged the first information report indicating his suspicion on the appellant as an author of the crime.

4) J.S. Badoria SHO investigated the crime, who visited the spot, prepared the Panchnama of the dead body of deceased Bhagela which was found inside the house of the appellant and sent the body for autopsy. Doctor Abhijeet Sen conducted the autopsy and opined that cause of death was shock resulting from extensive injuries to the brain and severe blood loss from severed blood vessels of the neck. During investigation, on appellant's memorandum one knife from a pond and one axe from well were recovered and after examination Medical Officer gave his opinion that the injury over the head of the deceased could have been caused by the axe and the injury over the neck could have been caused by the knife. Statements of witnesses were recorded under Section 161 of the Cr.P.C. Blood stained earth and control earth were seized from the spot. Clothes i.e., one Banian and half pant worn by the appellant were also seized. Sonography report has been collected regarding illicit relation and pregnancy of appellant's mother - Chadrika Bai. After completion of investigation, charge sheet was led in the Court of Chief Judicial

Magistrate, who committed the case to the Court of Sessions for trial.

5) Charge under Section 302 of the I.P.C., has been framed against the appellant, read over and explained to him who abjured the guilt. Appellant's defence was that he is innocent and has been falsely implicated in the case.

6) Learned trial Court, after due appreciation of the evidence held that Chandrika Bai had illicit relation with deceased Bhagela and as a result thereof she conceived and was carrying pregnancy. Chandrika Bai to save herself from humiliation left the village and was living in her parental house. On 19/11/1990 appellant stated that his younger brother was frightened, called the deceased to sleep in his house and took him to his house. In the night deceased slept in the appellant's house. In the early morning when Milapa Bai came to the appellant's house, appellant said that Bhagela was not here and soon thereafter changed his version and asked to see in other room and in other room dead body of deceased Bhagela was lying on a cot. At the instance of the appellant, axe article (A) was recovered and seized and knife article (B) was recovered and seized. Medical Officer opined that the injuries found on the dead body of deceased Bhagela could have been caused by the seized articles axe (A) and knife (B). Further, learned trial Court considering all the circumstances held the appellant guilty for committing the offence of murder of Bhagela punishable under Section 302 of the I.P.C., convicted and sentenced him accordingly.

7) Dr. Abhijeet Sen (PW/9) in his evidence has deposed that on 20/11/1990 he performed post mortem over the dead body of Bhagela and found the following external injuries.

"1. An incised wound 2" x ½" on the left temporo-parietal region at the level of upper end of pinna of the ear, horizontal in direction, clean margins, bone exposed and the bone was also cut, large blood clot present in the scalp around the injury.

2. An incised wound on the neck extending from just behind the left stern mastoid muscle to 1" to the right of the thyroid cartilage, size 8" long and 3" wide. The left carotid artery left jugular vein, left stern mastoid muscle, strap muscles of the left side of the neck, thyroid cartilage were all cut exposing the cortical vertebrae"

He further deposed that on internal examination he found as below:

"A penetrating wound cutting through the bone of the left temporo parietal region size 2" x ¼" with a leniar fracture of the skull bones of the left side, extending from and continues from the posterior end of the above bony injury to the middle of the occipital bone posteriorly.

The meninges of the brain were cut in the wound area. The brain was lacerated just bellow the wound area with large clots of blood in the brain and meninges.

He has further deposed that in his opinion the cause of death was shock resulting from extensive injuries to the brain and severe blood loss from the severed blood vessels of the neck. Both the above injuries found on the dead body of deceased Bhagela were ante mortem in nature. His report is Ex.P/11-A. His statement has not been challenged in cross examination and no

other material is there to disbelieve his evidence. Therefore, from his evidence it was proved that the deceased Bhagela died homicidal death as a result of injuries caused on his head and neck.

8) The whole case rests on circumstantial evidence. Hon'ble the Apex Court has led law from time to time on circumstantial evidence. Hon'ble the Apex Court while delivering judgment in ***State of M.P. Vs. Sanjay Rai, reported in (2004) 10 SCC 570***, relying on the judgments delivered in ***Hukam Singh Vs. State of Rajasthan, reported in (1977) 2 SCC 99***, ***Eradu Vs. State of Hyderabad, reported in AIR 1956 SC 316***, ***Earabhadrapa Vs. State of Karnataka, reported in (1983) 2 SCC 330***, ***State of U.P. Vs. Sukhbasi, reported in AIR 1985 SC 1224***, ***Balwinder Singh Vs. State of Punjab, reported in AIR 1987 SC 350***, ***Ashok Kumar Chatterjee Vs. State of M.P., reported in AIR 1989 SC 1890***, ***Bhagat Ram Vs. State of Punjab, reported in AIR 1954 SC 621***, ***C. Chenga Reddy Vs. State of A.P., reported in (1966) 10 SCC 193***, ***Padala Veera Reddy Vs. State of A.P., reported in AIR 1990 SC 79***, ***State of U.P. Vs. Ashok Kumar Shrivastava, reported in (1992) 2 SCC 86***, ***Hanumant Govind Nargundkar Vs. State of M.P., reported in AIR 1952 SC 343***, ***Sharad Birthichand Sarda Vs. State of Maharashtra, reported in AIR 1984 SC 1622***, has held that conviction can be based solely on circumstantial evidence, but it should be tested on touchstone of law relating thereto laid down by the Apex Court. Law settled by the Apex Court on circumstantial evidence is that the circumstances must be cogently

and firmly established and when all the circumstances taken cumulatively should form a chain so complete that there was no escape from the conclusion that within all human probability the crime was committed by the accused and none-else and in capable of any other hypothesis than that of the guilt of the accused. Such circumstantial evidence should not only be consistent with the guilt of the accused, but should be inconsistent with his innocence.

9) In the instant case, the conviction has been held on the circumstances that appellant had a motive to kill the deceased and the deceased was last seen alive in the company of the appellant who from the house of deceased took the deceased to his own house and in the house of appellant, the dead body of deceased who had severe injuries on his head and neck, was found. The weapon by which the injuries have been caused to the deceased was recovered on the discovery and information made by the appellant.

10) Admittedly, Chandrika Bai who is the mother of the appellant was widow. Her husband had died three - four years ago from the date of incident. Milapa Bai in her statement has deposed that Chandrika Bai, when came to village after her marriage with the father of Baldau Singh, since then she had love affairs with the deceased. Dev Charan Sahu (PW/3) has deposed that since last seven - eight years deceased had illicit relation with the mother of the appellant and appellant also knew that the deceased had illicit relation with his mother.

11) Doctor Gurumukh Meghani (PW/7) has proved the report (Ex.P/2) issued by him and deposed that he did pelvic sonography of Mrs. Chandrika Bai and after examination he was of the opinion that she had normal single pregnancy of about 13 weeks. Report (Ex.P/2) was issued on 16/11/1990. Neither the above evidence has been challenged nor rebutted, therefore, it was proved that the deceased had illicit relation with widow Chandrika Bai who is the mother of the appellant and as a result thereof widow Chandrika Bai conceived and was carrying pregnancy of 13 weeks. The fact that she was carrying pregnancy, exposed only after the medical examination which was done on 16/11/1990.

12) Ramin Bai (PW/1) and Milapa Bai (PW/2) in their evidence have categorically deposed that in the intervening night of 19/20-11-1990 appellant came and requested the deceased to sleep in his house and took him to his house for sleeping there. Milapa Bai (PW/2) has further deposed that next day in the early morning she went to the appellant's house to wake up Bhagela so that they may go to work. Appellant told that Bhagela was sleeping in other room. She entered the other room and found the dead body of the deceased Bhagela lying in injured condition having cut injury over neck and blood was lying there. She raised cry and on hearing her cry people gathered there to whom she narrated the story. Ramin Bai (PW/1) has also deposed that Milapa Bai by weeping and crying came and told that Bhagela was killed.

13) The statements of both the witnesses do not suffer from any infirmity and no evidence has been adduced to rebut their testimony. Therefore, it was also proved that in the intervening night of 19-20/11/1990 appellant took the deceased Bhagela to his house and in the early morning dead body of Bhagela was found inside the house of appellant

14) From the evidence of Nanhi Singh (PW/6) and Virendra Singh (PW/11) it has been proved that the appellant discovered the fact that he has thrown the axe in the well and knife in the pond and at his instance the axe was seized vide seizure memo of Ex.P/8 and knife was seized vide Ex.P/9. From the evidence of J.S. Bhoriya (PW/12) and Dr. Abhijeet Sen (PW/9), it has been established that the seized axe and knife were sent to medical officer for examination and opinion and after examination medical officer gave opinion that injury No.1 of deceased Bhagela could have been caused by the seized axe and injury No.2 could have been caused by the seized knife. By the said evidence, it has been proved that the axe and knife recovered at the instance of the appellant are the weapons of offence by which injuries over head and neck of deceased Bhagela had been caused.

15) In the instant case, it is pertinent to note one more circumstance was available on the record, but that circumstance has not been considered by the Court below. That circumstance appears in the evidence of Rana Singh (PW/5). He has deposed in his evidence that he heard the noise of weeping and crying

coming from the house of Bhagela, therefore, he was going towards there and on the way he met Dev Charan Sahu and Shiv Charan Sahu they told that Bhagela has been killed. On the spot appellant also met who told that Shiv Charan, Dev Charan and others are suspecting that he has killed Bhagela, therefore, he is afraid that he would be killed. Rana Singh (PW/5) has further deposed that he apprehending that appellant may be killed, took him to the Police Station so that he may be saved. This evidence has not been challenged. Appellant if he was innocent, had an opportunity to explain, but instead of giving any explanation he sought protection.

16) All the above circumstances taken together form a complete chain and gives a picture that the mother of the appellant Chandrika Bai had illicit relation with the deceased as a result of which Chandrika Bai conceived and soon before the date of incident it was exposed that she was carrying pregnancy of 13 weeks. Therefore, to save the prestige of family and reputation, Chandrika Bai left the village and in the intervening night of 19-20/11/1990 appellant who is son of Chandrika Bai called the deceased to sleep with them and took the deceased Bhagela to his house and when Bhagela was sleeping in room appellant by inflicting injuries by axe on his head and by Dagger (knife) on his neck brutally killed Bhagela. In the early morning when his maternal sister - Milapa Bai came to wake up him she found the dead body of Bhagela inside the appellant's house.

17) Learned trial Court after due appreciation of the evidence, rightly took the proved circumstances for proving the offence of murder of Bhagela by the appellant has not committed any error and rightly convicted and sentenced him.

18) In the result, the appeal fails and is dismissed. Conviction and sentence awarded by the Sessions Judge are maintained.

Sd/-
V.K.Shrivastava
Judge

Sd/-
Satish K. Agnihotri
Judge

Raju